

MF 07-5

Tax Type: Motor Fuel Use Tax

Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC, LLC**

**Taxpayer**

**Docket # 06-ST-0000**

**Acct # 00-00000**

**NTL # 00-000000 0**

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**RECOMMENDATION FOR DISPOSITION**

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois.<sup>1</sup>

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Penalty for Dyed Diesel Fuel Violation (“Notice”) to ABC, LLC (“taxpayer”). The Notice alleged that the taxpayer operated a licensed motor vehicle with dyed diesel fuel in its tank in violation of the Motor Fuel Tax Act (“Act”) (35 ILCS 505/1 *et seq.*). The taxpayer timely protested the Notice. A hearing was held during which the taxpayer argued that the vehicle was recently purchased and the dyed fuel must have been in the tank when the vehicle was

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<sup>1</sup> The taxpayer was not represented by an attorney. John Doe and Jim Doe, who are owners of the company, appeared for the taxpayer.

purchased. The taxpayer claims it did not put the dyed fuel in the tank. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On October 3, 2006, an agent for the Department tested the fuel in the tank of one of the taxpayer's trucks. The truck was purchased on August 5, 2006, and the taxpayer received temporary plates for the truck on September 5, 2006. (Dept. Ex. #1, 2; Taxpayer Ex. #1, 2)
2. The test result of the sample taken from the tank indicated the presence of dyed diesel fuel with a dye concentration of 2.1 parts per million. (Dept. Ex. #2)
3. On October 27, 2006, the Department issued a Notice to the taxpayer showing a penalty due of \$2,500 for being the operator of a licensed motor vehicle that had dyed diesel fuel in its tank on October 3, 2006. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Act provides in relevant part as follows:

15. If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle \* \* \*, the operator shall pay the following penalty:

First occurrence.....	\$2,500
Second and each occurrence thereafter.....	\$5,000

(35 ILCS 505/15). The taxpayer contends that the vehicle was recently purchased and the taxpayer did not put the dyed diesel fuel in the truck. The taxpayer stated that all of the other vehicles that the Department's agent inspected at the time that this truck was inspected did not have dyed fuel in their tanks, and it would have taken several tanks of gas to flush out the dyed fuel from this truck.

Subsection (b) of the Department's regulation concerning penalties for dyed diesel fuel violations states that a penalty of \$2,500 shall be imposed if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tank. Subsection (g) of the same regulation provides as follows:

The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in quantities greater than .1 part per million. 86 Ill. Admin. Code §500.298(g).

The dye concentration of the fuel in the taxpayer's tank was 2.1 parts per million, and the taxpayer has not disputed the fact that dyed diesel fuel was in the tank of the truck. The taxpayer has asked that the penalty be waived, to be placed on probation, and to have time to clean out the tank. The statute, however, does not allow the penalty to be waived once a violation has occurred. The fact that the taxpayer may not have known that the dyed fuel was in the tank is also not a basis, under the statute, for abating the penalty. An agency only has authority given to it by the legislature through the statute. Davis v. Chicago Police Board, 268 Ill.App.3d 851, 856 (1st Dist. 1994). Because this tribunal has no statutory authority to abate the penalty in this case, it cannot be recommended that the penalty be abated.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be upheld.

Linda Olivero  
Administrative Law Judge

Enter: March 23, 2007